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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,039	03/27/2008	Charles Chapus	171.006	1965
38245	7590	11/10/2011		
JEROME D. JACKSON (JACKSON PATENT LAW OFFICE)			EXAMINER	
211 N. UNION STREET, SUITE 100			DEERY, ERIN LEAH	
ALEXANDRIA, VA 22314				
			ART UNIT	PAPER NUMBER
			3751	
			NOTIFICATION DATE	DELIVERY MODE
			11/10/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@japalaof.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,039	<b>Applicant(s)</b> CHAPUS, CHARLES	
	<b>Examiner</b> ERIN DEERY	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 Oct 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 1 - 22 is/are pending in the application.
- 5a) Of the above claim(s) 3, 5 - 8, 15 - 20 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1, 2, 4, 9 - 14, 21, 22 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 25 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>16 June 09</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species C in the reply filed on 11 Oct 2011 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 3, 5 – 8, and 15 - 20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11 Oct 2011.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the motor drive rollers and the tread in detail as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief

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description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the removable device for fastening the wings to the arch of claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "800" and "840a/b" have both been used to designate the ramps. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

7. The abstract of the disclosure is objected to because of the use of the word “means” throughout. Legal terminology should be avoided. Correction is required. See MPEP § 608.01(b).

8. 35 U.S.C. 112, first paragraph, requires the specification to be written in “full, clear, concise, and exact terms.” The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: page 11, line 9, it is unclear how the cover “seals” the pool. On page 14, lines 12 – 13, it is unclear what “logic structure” means, as it refers to the conveyors. On page 24, line 7 it is unclear what “engagement with play” means. Additionally, Applicant is advised to use consistent language throughout the specification and claims. For instance, page 2, line 26 recites “the roof components” and then refers to them as “components” on page 3, line 3. It is noted that Applicant has used “mobilisation” and “optimisation” in several places in the specification. The spelling should be changed to “mobilization” and “optimization” in order to comply with American English spelling practices.

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “flared” as it describes the U shaped profile of the connection means in claim 14, line 3, was not found.

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10. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

12. Claims 1, 2, 4, 9 - 14 and 21 - 22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the elevators cause vertical movement, or how the cranks interact with individual roof components and the blocks, nor how the blocks for 'cams' or what their function is. Additionally, the function of the 'stop units' and how they cause the movement of the roof components to be limited is unclear. How the rack and pinion interaction causes motion of the roof components is also unclear. Finally, it is unclear how the connection means allows for the indissociable horizontal movement of the roof components, but also allows for the disengagement when the roof components are moved vertically. It is unclear where the connection means are located, how they engage with the individual roof components and how they facilitate sealed partial covering of the juxtaposed components.

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13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claims 1, 2, 4, 9 - 14 and 21 – 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

16. Regarding claim 1, it is unclear if the roof components are being claimed in addition to the stowing, storage, mobilization, and connecting means. Since the remaining claims depend from claim 1, they also inherit this defect.

17. Regarding claim 2, the meaning of “storage area corresponding to at least the ground surface of one roof component” is unclear.

18. Regarding 4, it is unclear what "logic structure" means or how the support frame acts as one.

19. Regarding claim 11, there is insufficient antecedent basis for “the arches,” “the panels” and “the sealed partial covering the juxtaposed components.”

20. Regarding claim 14, there is insufficient antecedent basis for “the upper part.”

***Claim Rejections - 35 USC § 102***

21. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

22. Claims 1, 2, and 11 – 14 are rejected, as best understood, under 35

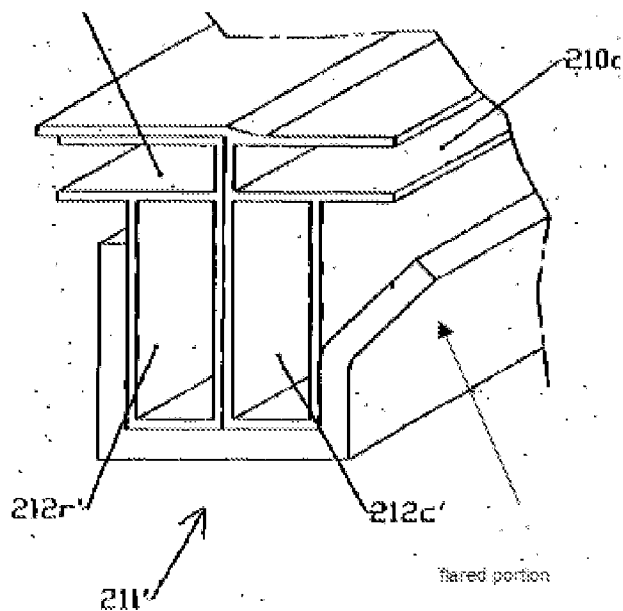
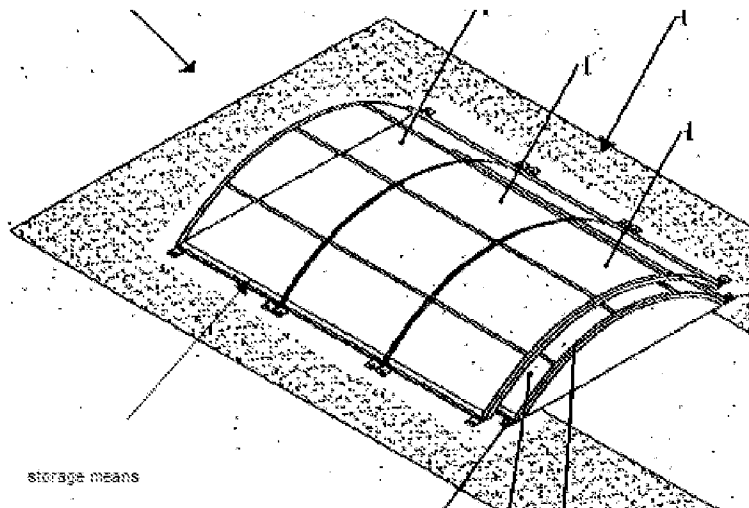
U.S.C. 102(a) as being anticipated by Chapus (US 2004/0187397).

23. Regarding claims 1 and 2, Chapus discloses a swimming pool covering which allows a pool to be exposed or concealed with roof components that are juxtaposed in the direction of the length of the swimming pool. The roof components are made of a translucent material (100) and have a rigid frame (200) formed of two arches and braced by crosspieces (220) with two end crosspieces delimiting two longitudinal parallel edges (220a and 220b). There are also edges which define a support surface (S). The support surface has a storage means (see annotated figure below) located at the end of the pool and corresponding to the ground surface, a mobilizing means (320a), a 'stowing means' which allows the roof components to be stacked, and a means of connecting the roof components such that they can be displaced integrally along a horizontal path and disassociated from one another, so that they be stacked vertically. When the roof components are pushed inward to the storage means, they are stacked, one underneath the other.

24. Regarding claims 11 - 14, Chapus shows a connection means, having arches with wings (210) which extend over the panels and permit sealed covering of the roof components (see fig. 8a). The connection means also allows the roof components to be articulated relative to the support edge of the pool (fig. 2), as the connection means are dissociable from one another in a vertical direction. There is a U-shaped profile (211) which conforms to the shape of the rectangular lower profiles of the arches and is

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'fastened,' such that the rectangular profiles are housed and inserted into the U-shaped profile (see fig. 8a and 8b). There is finally a flared edge (see annotate figure) of the U-shaped profile, which allows 'play' of the arch when the roof component is in a juxtaposed position.



***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

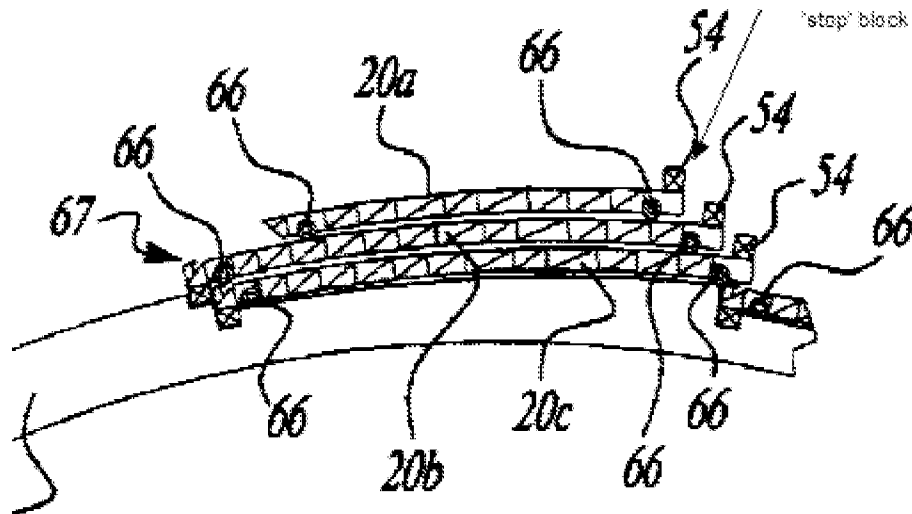
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 4, 9, 10, and 21 are rejected, as best understood, under 35 U.S.C. 103(a) as being unpatentable over Chapus, as applied to claims 1 above, and in further view of Reppas (US 5,778,603).

27. Regarding claims 4, 9, 10, and 21, Chapus discloses the instant invention as described above, but fails to disclose an elevator and rack/pinion mobility and stowing means. Attention is turned to Reppas, which teaches a retractable dome stadium having a plurality of roof components. Each of the roof components (20a-20d) has a flange (34) which has formed on it a rack, which engages with a pinion (42), which is driven by motors (44). Each roof components has a block (54, see annotated figure) which could act as a 'stop.' The dome is opened by actuating the motors, which cause the lower most panel to retract until it rolls over the next panel and so on, so the motors are fully stacked and elevated (col. 4, ln. 6 – 15). It would have been obvious to one having ordinary skill to have provided a rack and pinion gear set and motors to in the roof cover

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of Chapus in order to mechanize the opening and closing of the pool cover.



### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leurent (US 4,783,861) and Kumode (US 4,175,361) show telescoping swimming pool covering structures. Glick (US 4,616,451) shows a telescoping roof structure. Hall (US 3,415,260) shows an extensible canopy structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIN DEERY whose telephone number is (571)270-1928. The examiner can normally be reached on Mon - Thurs; 7:30 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751

/ERIN DEERY/  
Examiner  
Art Unit 3751